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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/264,267 03/08/99 LEVSEN C 27070

PM82/1110
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EXAMINER

NOVOSAD, J

ART UNIT	PAPER NUMBER
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3634

DATE MAILED:

4
11/10/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/264,267

Applicant(s)

Levsen

Examiner

Jennifer E. Novosad

Group Art Unit

3634



☒ Responsive to communication(s) filed on Mar 8, 1999

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

☒ Claim(s) 1-20 is/are pending in the application

Of the above, claim(s) _____ is/are withdrawn from consideration

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-12, 14-16, and 18-20 is/are rejected.

☒ Claim(s) 13 and 17 is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☒ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

Claim Objections

Claims 1 and 2 are objected to because of the following informalities:

In claim 1, line 6, it is suggested that "assembly" be changed to --rod assembly--.

In claim 2, line 1, "claim1" should be changed to --claim 1--.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 9-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 9, lines 2-3, the language of the recitation "to prevent relative to lengthwise shifting of the rods" is awkward.

The recitation "slightly smaller" in line 2 of claim 11 is a relative term and therefore renders the scope of the claim indefinite.

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Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-5, 8-12, and 18-20 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Hsu '276.

Hsu '276 discloses a device comprising a case (1 - see Figure 2) having a substantially flat floor and a wall structure (15) projecting upwardly from the base defining a solid structure to permit fluid containment and whereby a **generally** square shaped utensil-receiving opening is defined therebetween the floor and wall structure (15); a utensil-retaining rod assembly (2) including a plurality of elongated, flexible (see column 2, line 10) splinter shaped rod members, having the same length, and whereby the rod members are confined within the opening so that when a utensil (see Figure 5) is inserted into the opening, adjacent rod members will support the utensil and then substantially collapse when the utensil is removed; the rod assembly (2) comprising a base and a common end of the rod members fixed to the base, projecting therefrom and being detached from one another, whereby the rod assembly may be unitarily removed from the opening; the base of the rod assembly is similar in cross-section to and smaller than the opening; the wall structure (15) having a planar uppermost edge that is parallel to the floor and the rods extending lengthwise along the wall structure (see Figure 2) whereby an endmost,

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substantially flat entry face (see Figure 3) which is **generally** flush with the uppermost edge of the wall structure is formed and whereby a utensil is inserted into the entry face.

The claims differ from Hsu '276 in requiring: (1) the ends of the rods to be rounded, and (2) the rods to be cylindrical.

With respect to (1) and (2), although Hsu '276 fails to show the rod members to be cylindrical or to have rounded ends, it would have been an obvious engineering design choice to one of ordinary skill in the art at the time the invention was made to have fabricated the rod members as cylindrical shaped and having rounded ends, for ease in economy and manufacture and for safety.

Claims 2 and 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hsu '276 as applied to claims 1, 3-5, 8-12, and 18-20 above, and further in view of Bittinger '228.

The claims differ from Hsu '276 in requiring: (1) a case formed from synthetic resin, (2) the rods and the base to which they are attached to be formed of a synthetic resin, (3) the base being formed by the rods and a synthetic resin filler interspersed among the rods, and (4) the synthetic resin filler to be acrylic.

With respect to (1) - (4), Bittinger '228 teaches that it is old in the art to utilize synthetic resin and synthetic resin filler, i.e., glue.

It would have been an obvious engineering design choice to one of ordinary skill in the art at the time the invention was made to have fabricated the device of Hsu '276 from synthetic resin, as taught by Bittinger '228, for ease in economy and manufacture.

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Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hsu '276 as applied to claims 1, 3-5, 8-12, and 18-20 above, and further in view of Buchtel '939.

Buchtel '939 teaches an apparatus comprising a case (50) having feet (60 and 62) disposed thereunder.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the device of Hsu '276 with the feet disposed under the case, as taught by Buchtel '939, so that the feet can support the device in a horizontal position.

Allowable Subject Matter

Claim 13 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: The prior art of record fails to show or suggest a holder comprising a case defining an opening therein, a rod assembly disposed in the opening whereby the rod assembly comprises a plurality of rods attached to a base whereby the rods defining an "endmost entry face opposite from the base" span the opening and a utensil which pierces the entry face "passes along the length of the rods" as specifically called for in the claimed combination in claim 13.

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Claim 17 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: The prior art of record fails to show or suggest a holder comprising a case defining an opening therein, a rod assembly disposed in the opening whereby the rod assembly comprises a plurality of rods having common detached ends that define "an endmost entry face spanning the opening" so that a utensil pierces the entry face and "passes along the length of the rods" as specifically called for in the claimed combination in claim 13.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is (703) 305-2872. The examiner can normally be reached on Monday to Thursday from 7:30 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola, can be reached on (703) 308-2686. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3597.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2168.

A handwritten signature in black ink that reads "Daniel P. Stodola". The signature is written in a cursive style with a large, looped initial "D".

Daniel P. Stodola
Supervisory Patent Examiner
Group 3600

Jennifer E. Novosad/jen

November 2, 1999